IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.Criminal Misc. Petition No. 401/2004

Uttari Rajasthan Sahakari Dugdh Utpadak Sangh Limited & Anr.

Vs.

State of Rajasthan

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Date of order : 12.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Shekhawat for the petitioners.

Mr. Ashok Upadhyay, Public Prosecutor.

By the instant criminal Misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 24.1.2003 passed by Additional Chief Judicial Magistrate No.2, Bikaner (for short 'the trial court' hereinafter) in Criminal Misc. Case No.88/2003 whereby the trial court took the cognizance of the offence under Section 3/7 of the Essential Commodities Act against the petitioners.

I have heard learned counsel for the petitioners and perused the order impugned.

Complainant Gajendra Singh filed a complaint before the court of Special Judge, (Essential Commodities Act Cases) Bikaner alleging therein that on 14.7.98 he purchased the milk pouches from the accused persons. The milk article was not marked as per the criteria laid down in the Milk and Milk Product Order, 1992 (for short 'the Order of 1992' hereinafter).

It is contended by the learned counsel for the petitioners that at the first instance the complainant had no right to file a private complaint. It is also submitted that the provisions of Paragraph 26 of the Order of 1992 are not attracted in the instant case. It has further been submitted that as required by Clause 49 of the Order of 1992 no permission has been obtained by the concerned registering authority.

The Central Govt. in exercise of powers under Section 3 of the Essential Commodities Act having formed the opinion that for maintaining and increasing supply of liquid milk of desired quality in the interests of the general public, it is necessary to provide for regulating the production, supply and distribution of milk and milk product framed the rules in name of Milk and Milk Product Order, 1992. Section 26 provides for requirement of certification, packing, marking and labelling. Section 29 provides for previous sanction for prosecution.

Section 29 is extracted as follows :-

> "29. In the case of any contravention of any of the provisions of this Order by the holder of registration certificate or any other person, the concerned Registering Authority shall be empowered to initiate suitable action against the holder of registration certificate or any other person, as the case may be."

In the instant case timely no sanction has been obtained for the prosecution from the Registering Authority. It may further be noticed that a prosecution can be filed only by the persons referred in Section 28, which reads as follows :-

> "28. **Prosecution**: Any person,-
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> (a) handling or processing or controlling or manufacturing milk or any milk product without obtaining a registration certificate as required under this Order, or
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> (b) Continuing to manufacture or process or handle or pack milk or milk product after suspension or revocation or expiry of registration certificate issued, or
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> © handling, processing, manufacturing, controlling or packing milk or milk product in contravention of the provisions of this Order or of the terms and conditions of the registration certificate, or
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> (d) producing any item in excess of the quantity specified for that item in the registration certificate, or
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> (e) making any manufacturing facility in contravention of the provisions of sub-paragraph (1) of paragraph 5, shall, in addition to suspension,

> revocation, or cancellation of his registration certificate, be liable to prosecution for the contravention of the provisions of this Order."

The complainant does not fall in any of the category referred in Section 28.

This Court in Narendrapal Kotadia Vs. State reported in 2001 (1) Cr.L.R. 589 following the decision of the Apex Court in P.Sirajuddin etc. Vs. The State of Madras etc. reported in A.I.R. 1971 S.C. 520 cautioned that the courts of Magistrate should be extremely careful in a case where complaint is filed by a private party complaining to an act of a public servant in discharge of his duty. Repeatedly caution has been given that court must ensure discouragement of fraudulent, doubtful and impolitic prosecution at the instance of the vindictive or jealous private complainant.

This Court in Uttari Rajasthan Sahakari Dugdh Uttapadak Sangh Ltd. and Anr. Vs. Ram Kishan and Anr., S.B.Criminal Revision No.1118/03 decided on 22.7.2004 quashed and set aside the order impugned therein on similar facts and therefore, in view of the aforesaid, the prosecution against the petitioners is not sustainable and thus, allowing the order impugned to stand would be nothing but abuse of the process of the Court.

Consequently, the criminal misc. petition is allowed. The order impugned dated 24.1.2003 passed by Additional Chief Judicial Magistrate No.2, Bikaner taking cognizance of offence against the petitioners under Section 3/7 of the Essential Commodities Act is quashed and set aside.

(H.R.PANWAR), J.

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